IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

RP.No. 597 of 2006(M)

AGAINST THE JUDGMENT IN WPC.12308/2005 Dated 14/11/2005

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REVIEW PETITIONER/3RD RESPONDENT

THE KERALA PUBLIC SERVICE COMMISSION,
REP. BY ITS SECRETARY,
PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

RESPONDENTS: PETITIONERS

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1. BINU CHANDRASEKHARAN.K,
S/O.CHANDRASEKHARAN,
KOGARPPILLY, ERNAKULAM.

2. SMT.ANJI.S,
RETHNAM, SREEMANGALAM, K.R.A.45 A,
THOTTAM, MANAKKAD.P.O,
THIRUVANANTHAPURAM.

3. THE STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPT.,
SECRETARIAT, THIRUVANANTHAPURAM.

4. THE DIRECTOR,
DIRECTORATE OF HOMEOPATHY,
THIRUVANANTHAPURAM.

R1 & 2 BY ADV. SRI.SAJEEV KUMAR.K.GOPAL
SRI.BINOY VASUDEVAN
R3 & 4 BY GOVERNMENT PLEADER SHRI. P.NANDAKUMAR

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON 12/2/2007 PASSED THE FOLLOWING:

K.K. DENESAN, J.

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R.P. No. 597 of 2006 in
W.P.(C) No. 12308 OF 2005 M
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Dated this the 12th February, 2007

O R D E R

The Kerala Public Service Commission (hereinafter referred to as 'the Commission'), the 3rd respondent in W.P.(C) No. 12308 of 2005, is the review petitioner.

2. This Court as per judgment dated 14-12-2005 disposed of the above writ petition directing the Commission to advise candidates against the vacancies reported to it during the currency of the rank list, for appointment to the post of Homoeo Pharmacist in the Homoeo Department. The above direction was issued in the light of the decision of a Division Bench of this Court in ***Stalin*** v. S***tate of Kerala*** (2006 (1) KLT 493). Subsequently another Division Bench passed Reference Order dated 23-3-2006 expressing the view that Stalin's case (supra) did not consider the impact of an earlier Bench decision in ***Kunju Kunju*** v. ***State of Kerala*** (2005 (1) KLT 364) and that the matter required consideration by a larger Bench. Accordingly, a Full Bench of this

Court in ***Mohanan*** v. ***Director of Homeopathy*** {2006 (3) KLT 641 (FB)} considered the question and answered that Stalin's case has not laid down the correct law and held that notwithstanding the currency of the rank list prepared and published by the Commission in accordance with the recruitment rules in force prior to the introduction of the Special Rules for the Kerala Homoeopathy Subordinate Service, 1999 with effect from 12-4-1999, the vacancies which arose subsequent to the amendment of the rules on 12-4-1999 shall be filled up only in accordance with the Special Rules promulgated with effect from 12-4-1999. The Commission has therefore filed the above petition seeking for a review of the judgment in W.P.(C) No. 12308 of 2005.

3. Heard both sides.

4. Counsel for the respondents (writ petitioners) contended that declaration of law by a subsequent decision will not affect the binding nature of a judgment rendered on the basis of the law as it stood on the date of pronouncement of the judgment under review. I am unable to accept the above contention as a valid ground to reject a petition for review of the

judgment. The judgment under review has not become final, in the sense that the review petitioner has not exhausted the remedy of review or appeal. Since the basis for issuing directions to the review petitioner vide judgment dated 14-12-2005 was the law laid down by the Division Bench in Stalin's case, which has now been held to be not good law by the Full Bench, the Commission is entitled to seek for a review of the judgment dated 14-12-2005. Accordingly, the judgment dated 14-12-2005 in W.P.(C) No. 12308 of 2005 is recalled. The review petition is allowed.

K.K. DENESAN
JUDGE

jan/